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VIA ELECTRONIC FILING

May 13, 2019

Ex Parte Communication

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte*, The Uniendo a Puerto Rico Fund and the Connect USVI Fund, Connect America Fund, ETC Annual Reports and Certifications, WC Docket Nos. 18-143, 10-90 and 14-58

Dear Ms. Dortch:

Puerto Rico Telephone Company, Inc. ("PRTC"), by its attorneys, files this *ex parte* letter to respond to the April 2, 2019 *ex parte* communication submitted by Liberty Cablevision of Puerto Rico, LLC ("Liberty") in connection with the Uniendo a Puerto Rico Fund ("Uniendo Fund").¹

In the *ex parte*, Liberty argues that "the CAM approach is not the most efficient or best-suited for the distribution of Stage 2 funding in Puerto Rico" because of the uncertainty concerning the number of habitable locations after the hurricanes.² Liberty then urges the Commission to set aside the Connect America Cost Model ("CAM Model") and replace it with a "slightly different model."³ Liberty also argues that using municipios as the minimum geographic unit will not allow the support to be targeted to unserved locations and, therefore, the Commission should use census block groups as the geographic unit on which funding determinations are based.⁴ As explained below, Liberty's proposal raises more problems than it answers and should be rejected by the Commission.

¹ Letter from Danielle Frappier, Counsel to Liberty Cablevision of Puerto Rico, LLC, to Marlene H. Dortch, FCC Secretary, WC Docket Nos. 18-143, 10-90, 14-58 (filed Apr. 2, 2019) (Liberty Ex Parte).

² Indeed, PRTC has recognized that it is a lack of accurate data regarding the number of locations in post-hurricane Puerto Rico. *See e.g.*, PRTC Comments at 19 (July 26, 2018) (stating that identifying the number of locations in each geographic area is problematic due to changes in the number of locations post-hurricane and the difficulties in obtaining more recent, accurate data); PRTC Ex Parte at slide 13 (Oct. 12, 2018) (stating that it is "difficult to determine the number of locations in post-hurricane Puerto Rico"); PRTC Ex Parte at 3 (Feb. 15, 2019) ("The practical reality in post-hurricane Puerto Rico is that obtaining reliable information about which census blocks are served/unserved by an unsubsidized provider will be extremely challenging and is a process that is contentious and fraught with delay").

³ Liberty Ex Parte at 2.

⁴ Liberty Ex Parte at 3-5.

Liberty proposes that the Commission place the burden on Uniendo Fund bidders to determine the number of total and unserved locations in a census block group.⁵ Liberty does not describe the methodology to be used by bidders, but merely proposes the Commission require bidders to demonstrate that their methodologies produce “a reasonably accurate count.”⁶ Liberty does not explain how the estimated location counts would be used to distribute funding outside of the CAM Model. Liberty does not specify how the Commission should resolve instances in which the applicants’ location counts are different. Liberty also does not explain whether a winning bidder would be required to make broadband available to all locations in the census block group or some subset of that number. This is not how the Commission should design the Uniendo Fund.

The proposals put forth by the Commission in the Notice of Proposed Rulemaking and PRTC use a pre-determined fund size and the CAM Model to distribute the fund between geographic units to establish a reserve price for each unit. The CAM Model establishes the cost to build to all unserved locations in a census block, census block group or municipio, and the difference between that cost and the expected customer revenue establishes the relative funding requirements. These relative funding requirements are then scaled based on the predetermined fund size. Under the Commission’s and PRTC’s proposals, the uncertainty regarding location counts will introduce some degree of error in the reserve prices when an overestimation of unserved locations in one geographic unit will lead to an overestimation of the reserve price. PRTC’s proposal mitigates this problem by using a larger geographic unit – municipios – where overestimation in one census block group inside the municipio may be offset by an underestimation of the other.

The true challenge for the Commission is how it can verify that a carrier has met its deployment obligations given the location count uncertainty in post-hurricane Puerto Rico. Under CAF Phase II, buildout obligations are expressed in terms of number of locations. During the CAF period, carriers have been reporting the geocoded coordinates of all funded locations where broadband has been made available. At the end of the CAF II period, these carriers will be considered to have met their obligation if *all* the CAM Model-funded locations have broadband available. However, carriers have reported to Commission staff a multitude of problems with the location counts, including that the CAM Model’s total and funded location counts do not match the actual locations. This problem arose most recently in September 2018 as the Wireline Competition Bureau (“Bureau”) issued a public notice on the implementation of a process for resolving location discrepancies for CAF Phase II auction recipients.⁷ The *Location*

⁵ Liberty Ex Parte at 2-3.

⁶ Liberty Ex Parte at 3.

⁷ *Wireline Competition Bureau Seeks Comment on Procedures to Identify and Resolve Location Discrepancies in Eligible Census Blocks Within Winning Bid Areas*, WC Docket No. 10-90, Public Notice, DA 18-929 (rel. Sept. 10, 2018) (Location Discrepancy Public Notice).

Discrepancy Public Notice makes clear that dealing with location count uncertainty is not something that may be addressed hastily or in a perfunctory manner. Indeed, the process established by the Commission requires the Bureau to:

(1) collect probative evidence of actual locations from those Phase II auction support recipients choosing to participate in this process (participants) (including evidence demonstrating that the participants could find no additional actual locations other than those identified with location data); (2) make all such evidence available for review by relevant stakeholders and specify the types of evidence that such stakeholders should submit to challenge such evidence; (3) adjudicate individual claims for relief based on a preponderance of the evidence standard; (4) issue an order when appropriate to reduce deployment obligations and authorized support (on a pro rata basis); and, (5) conduct future audits of evidence submitted by participants. While the Commission set some parameters for certain aspects of this process, it also directed the Bureau to adopt requirements and issue guidance necessary for implementation, consistent with prior Commission direction regarding funded location adjustments.⁸

Applying the procedures in the *Location Discrepancy PN* to Liberty's proposed process where each bidder estimates the number of total and unserved locations, it is evident that the evaluation, challenge and verification for each bidder in each of the 2,551 census block groups in Puerto Rico is not workable. Although Liberty claims its approach "would avoid lengthy proceedings to first determine the number of locations in each geographic area," it would accomplish the exact opposite. Liberty's proposal would require Commission staff to conduct a "targeted review" of the bidder's methodology.⁹ This step alone would be very time consuming.

PRTC's proposal avoids the location problem. Under PRTC's proposal, winning bidders would be required to make broadband available to *all locations* within a municipio.¹⁰ Verification that this obligation is met would be based on the Commission's "reasonable request" standard. The winner bidder would be required to provide broadband service within a specified time to any consumer making a reasonable request. Under such a requirement, there would be no need to count locations to verify that the obligation has been met. The Uniendo Fund reasonable request standard could follow the path used by the Commission for rate-of-return carriers in CAF Phase

⁸ *Location Discrepancy Public Notice* at ¶ 2 (citations omitted).

⁹ Liberty Ex Parte at 3.

¹⁰ See PRTC Comments at 19 (July 26, 2018); PRTC Ex Parte at 5 (Oct. 12, 2018); PRTC Ex Parte at 2, 8 (Dec. 17, 2018); PRTC Ex Parte at 3 (Feb. 15, 2018).

II, *i.e.*, a request is reasonable if the request is in an unserved area and the expected customer revenue plus support exceeds the verified cost of provisioning the service.¹¹

Minimum Geographic Area

Liberty repeats its argument that using census block groups as opposed to municipios as the minimum geographic unit will better target support to unserved areas. As PRTC explained in its December 17, 2018 *ex parte*, the use of a smaller geographic unit does not guarantee that more unserved locations will have broadband built to them.¹² A competitive bidding process awarding support based on small geographic units would allow providers to cherry-pick which areas to bid on while leaving the most difficult to serve areas without any bids. The Commission articulated this concern in the *USF/ICC Transformation Order* when it gave incumbent LECs an opportunity to enter a state-level service commitment in exchange for support for six years. In rejecting proposals to adopt a right of first refusal at the smaller study area and wire center levels, the Commission stated that “both of these approaches would have allowed price cap carriers to pick and choose on a granular basis the areas where they would receive model-based support within a state,” which “would allow the incumbent to cherry pick the most attractive areas within its service territory, leaving the least desirable areas for a competitive process,” and that “requiring carriers to accept or decline a commitment for all eligible locations in their service territory in a state should reduce the chances that eligible locations that may be less economically attractive to serve, even with CAF support, get bypassed, and increase the chance such areas get served along with eligible locations that are more economically attractive.”¹³

Similarly, the best way to minimize or eliminate orphaned areas in Puerto Rico is to base the support award on a larger geographic unit and require that *all* locations within an awarded geographic unit have broadband available at the end of the period. The Commission should be skeptical about Liberty’s insistence in using CBGs if it wants to achieve its goal of expanding broadband service to as many unserved locations as possible.

Right of First Refusal

PRTC addresses Liberty’s statement that there is “no empirical basis” for giving PRTC, as the incumbent, the right of first refusal for Stage 2 fixed support. The relevant inquiry is whether,

¹¹ See *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order *et al.*, 29 FCC Rcd 7051, 7070, ¶¶ 59-68 (2014) (providing rate-of-return carriers clarity regarding their obligations to extend broadband service upon reasonable request).

¹² PRTC Ex Parte at 3-4 (Dec. 17, 2018).

¹³ *Connect America Fund et al.*, WC Docket No. 10-90 *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 173 (2011) (*USF/ICC Transformation Order*); *Connect America Fund et al.*, WC Docket No. 10-90, *et al.*, Report and Order, 29 FCC Rcd 15644 (2014) (increasing the duration of support for price-cap carriers that elect to make a state-level commitment from five to six years); 47 C.F.R. § 54.310.

given the limited nature of universal service dollars, the devastation caused by the hurricanes, and the Commission's enhanced goals for Puerto Rico, a right of first refusal is the most reasonable approach to accomplish the Commission's goals. The response is in the affirmative.

First, PRTC, as the largest provider with the most extensive telecommunications network in Puerto Rico, is uniquely positioned to combine the efficiencies, scale, scope, and history of providing service to bring advanced broadband services to unserved areas throughout the island. Second, PRTC's proposal represents the most efficient manner of solving the communications problem in Puerto Rico. Specifically, PRTC has stated that it is prepared to modernize and expand voice and high-speed broadband service of at least 10/1 Mbps, and up to 1 gigabit, to 100 percent of inhabited locations in 10 years if it is offered appropriate support on a right of first refusal basis.¹⁴ To the best of PRTC's knowledge, no other provider has made any proposal to the Commission, much less one that would bring broadband service to all inhabited locations.

Third, PRTC's proposal would eliminate the problem of orphaned areas because it would expand service to all inhabited locations.¹⁵ Fourth, a right of first refusal approach would avoid inefficient duplication of facilities. Fifth, a right of first refusal would allow the Commission to achieve its goals most expeditiously as it would obviate the need for a longer competitive funding allocation process.

Lastly, as previously referenced, the Commission is familiar with the right of first refusal approach. In the *USF/ICC Transformation Order*, the Commission offered incumbent price cap carriers CAF Phase II support for a period of six years in exchange for a commitment to offer voice across their service territory within a state and broadband service to supported locations within that service territory, subject to public interest obligations and accountability standards.¹⁶ A right of first refusal approach would make even more sense in the case of Puerto Rico given: (i) the catastrophic damage caused by the hurricanes; (ii) the Commission's expanded universal service goals which now include network restoration and hardening in addition to broadband expansion; (iii) the unique challenges for the deployment and operation of communications networks in Puerto Rico in terms of topography, geography and frequency of hurricanes and storms; and (iv) Puerto Rico's significantly higher-than-average poverty levels, declining

¹⁴ PRTC proposed the adoption of an additional annual budget for fixed providers of \$62 million above the existing legacy frozen support for a total of \$98 million per year. PRTC Comments at 15; PRTC Reply Comments at 16; PRTC Ex Parte at 2 (Oct. 12, 2018); PRTC Ex Parte at 4 (Feb. 15, 2019).

¹⁵ See PRTC Ex Parte at slides 4-6 (Mar. 28, 2019).

¹⁶ *USF/ICC Transformation Order*, 26 FCC Rcd 17663, ¶ 166. Additionally, it should be noted that the Commission defended this approach before the U.S. Court of Appeals for the Tenth Circuit, noting that "the FCC reasonably predicted that it could get more 'bang for its buck' by providing subsidies to incumbent LECs to upgrade their extensive existing facilities than by providing subsidies to competitive ETCs." Brief of the Federal Communications Commission, *In Re: FCC 11-161*, at pp 8-9 (10th Cir. July 24, 2013) (citations omitted).

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population, and a take rate for broadband that is much lower than that found in other parts of the country.

Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,

/s/ Edgar Class

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Counsel for Puerto Rico Telephone Company, Inc.

cc: Chairman Ajit Pai
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Commissioner Brendan Carr
Commissioner Jessica Rosenworcel
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